

PHILIP MORRIS COMPANIES, INC.INTER-OFFICE CORRESPONDENCE

120 PARK AVENUE, NEW YORK, N.Y. 10017

Privileged and Confidential

To: Corporate Management Committee

Date: March 20, 1995

From: Murray H. Bring *MB*Subject: WADLEIGH DECISION

On Friday afternoon, the Seventh Circuit Court of Appeals issued its decision in the Wadleigh case. This is an important and favorable development in connection with the Castano case in New Orleans.

In Wadleigh, the District Court followed a path quite similar to the one which Judge Jones adopted in Castano. Wadleigh involved a purported class action on behalf of approximately 10,000 hemophiliacs who have been infected with the HIV virus as a result of blood transfusions using blood furnished by four commercial companies that are the defendants in this case. The claim is that the companies were negligent in screening for the HIV virus. There are approximately 200 individual cases pending in various courts throughout the country. Thirteen trials on this issue have taken place, and the industry has won all but one.

The District Court judge decided to certify a class on the issue of negligence, but refused to certify a class for all purposes, thereby requiring each of the individual class members to go through a separate trial in the event that the class jury finds in plaintiffs' favor on the issue of negligence.

The Seventh Circuit issued an extraordinary Writ of Mandamus, and in the opinion delivered last Friday, which was written by Chief Judge Posner, the Court reversed the District Judge and ordered that he decertify the class. The opinion is extremely well written, and embraces most of the arguments which we made in New Orleans in urging Judge Jones not to certify a class for any purpose. The Seventh Circuit's decision was 2 to 1, and there was a dissenting opinion. However, even the dissenter indicated that she had doubts about whether the class trial proposed by the District Court will succeed. Nevertheless, she thought that the Court should not have reversed the District Court because she did not think the defendants had satisfied the heavy burden for issuance of a Writ of Mandamus. The plaintiffs have indicated that they will seek a rehearing by the entire Seventh Circuit, but I doubt that such a rehearing will be granted, or if it is, that a majority of the Court will disagree with Judge Posner, who is highly respected.

204988  
869988